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10/700,529	11/05/2003	Bernhard Wichelmann	900.43248X00	5921

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ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON, VA 22209-3873

EXAMINER	
PRICE, RICHARD THOMAS JR	
ART UNIT	**PAPER NUMBER**
3643	

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/700,529	WICHELMANN, BERNHARD	
	Examiner	Art Unit	
	Thomas Price	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 February 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borup U.S. Patent 5,045,021.

Borup teaches a method of thermal treatment and an apparatus for carrying out the method. More specifically, the steps of the method include scalding the bodies of pigs by introducing heated water vapor into a heated scalding compartment at a predetermined temperature. Further, at least one flow of a water vapor-air mixture is generated and guided against the carcasses at predetermined regions without the carcasses being submersed in water. See the related discussion column 3, lines 16-30. As seen in Figure 1, water vapor is introduced into a lower region of the scalding compartment. However, Borup does not discuss or teach the method of scalding on poultry carcasses.

In regards to claims 1 and 13, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the method of Borup to be performed on poultry carcasses, in that, both types of carcasses are widely known for being scalded during the processing of turning the carcasses into food, and as a result, are considered to be structurally equivalent.

As for claims 2 and 14, in Figure 1, the water air-vapor mixture is introduced at a lower region through nozzles 13/14.

Regarding claims 3 and 4, on column 3, lines 20-23, Borup teaches a scalding compartment heated to a temperature of about 48 degrees C to 65 degrees C.

In regards to claim 5, column 3, line 23, Borup teaches a relative humidity of 90%. The Examiner believes that 90% relative humidity defines a saturated water vapor.

As for claim 6, in Figure 1 of Borup, the animal carcasses are hung by their feet with a preset velocity along a pathway of a transporting line within the scalding compartment. See column 6, lines 45-48.

In regards to claim 7, the pathway length can be varied. See column 6, lines 22-24.

Regarding claims 8, 9,11, 12, 24 and 25, the control device 9 regulates the water vapor-air mixture.

In regards to claim 10, a conveyor 18 transports the carcasses past a plurality of guided flows 13/14 of the water vapor-air mixture.

As for claim 15, Borup performs the method of scalding in a chamber. Borup teaches the use of sluices 21 or doors in mutual alignment. The Examiner believes that a chamber inherently includes an inlet lock or door and an outlet lock or door.

Regarding claims 16 and 17, the term "conveyor" is widely regarded as a endless conveyor such that a loop is formed. The claim language of "having runs substantially parallel to each other" is not taught by Borup. Borup teaches having a plurality of subunits in series. However, it is widely known in the mass production systems of carcass processing to have multiple and parallel conveyor runs. This allows for

particular conveyor runs to be cleaned while other conveyor runs are operating. Further, the specification contains no discuss or proof as to the criticality of such a feature, and as a result, is considered to be obvious to a person of ordinary skill in the art at the time the invention was made.

Regarding claim 18, a fan 2 draws off the water vapor-air mixture from an interior of the scalding compartment and a pressure line which reintroduces the water vapor-air mixture into the scalding compartment. The water supplied from the outside to the chamber interior is considered to be a suction line, in that, air traveling over a water supply pipe will inherently create a suction due to the drop in air pressure as a result of the traveling air.

In regards to claims 20-24, Borup teaches nozzle holders arranged in the scalding compartment, including a horizontal tube and a closed end tube extending vertically. See Figure 1.

However, Borup does not teach a fan associated with a flap box.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borup U.S. Patent 5,045,021 in view of Snowden U.S. Patent 3,657,768.

Borup does not teach at least one fan associated with a flap box. Snowden teaches a damper or flap box 60 associated with a fan. Regarding claim 19, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the fan of Borup to include a flap box, in view of the teachings of Snowden, in order to provide proper air circulation in the water air-vapor mixture.

Regarding claims 26 and 27, the reference to Borup teaches first nozzles 14 attached to at least one horizontal tube (unnumbered). Each nozzle can be adjusted such that the water vapor-air mixture can be directed in any direction or angle. Second nozzles 14, a set adjacent to the first nozzles 14 are attached to at least one vertical tube 13.

Response to Amendment

The Applicant accurately states the Examiner's position "both types of carcasses are widely know for being scalded during the processing of turning the carcasses into food, as a result are considered to be structurally equivalent" and subsequently puts forth the argument "this reasoning is based upon hindsight and more over is improper. In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgement on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Applicant's disclosure, such a reconstruction is proper. *In re McLaughlin*, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971). *The Examiner has not based his judgement on any knowledge gleaned only from the Applicant's disclosure. In fact, using water vapor on a variety of animals for a variety of reasons has occurred for many years prior to the Applicant's claimed invention. The class in which this application is classified, i.e. class 452, includes numerous subclasses designated to this topic, and it is not further subdivided by animal type. Hence, absence any arguments that particularly highlight the claimed difference between the reference*

to Borup and the Applicant's claimed invention, the Examiner then strongly believes that the reference to Borup is certainly analogous. The Examiner takes note of comments presented by Mr. Poul Kjeldsen, however, Mr. Kjeldsen statements are general in nature and are not directed to any specific claim language, further, no proof is provided to the Examiner, that the Examiner somehow gleaned knowledge from the Applicant's disclosure to form an improper hindsight reasoning. . Further, the operating parameters of the reference to Borup predominantly teach all of the operating parameters of the Applicant's claimed invention. Also, the references cited by the Applicant seem to argue contrary to the Applicant's assertions that the processing of poultry are radically different from the processing of pigs. See the reference to Snowden. As such, the Examiner did not glean only the Applicant's disclosure, because it is well known in the art the various processing devices are capable of being used on other animals, i.e. poultry, pigs, cows, etc... *The Examiner has considered the Applicant's arguments regarding "there are no predetermined areason pigs which would meet the aforementioned subject matter", however, the phrase "predetermined region" is not some exact area, but more a general area. And to that regard, the reference to Borup includes numerous water vapor jet locations about the vertical and horizontal axes, such that, the entire area of any animal whether a poultry or pig, would be saturated about its entire body whether difficult or easy regions would be saturated* The Applicant puts forth a second argument that the processing of poultry require "specialized scalding to remove feathers" and supports this assertion by stating that "Borup's teaching for scalding slaughtered pigs utilizing heating of the rhine surface".

This argument in no way supports the Applicant's argument, first, the rhine surface heating up is merely the result of the processing chamber. Is the Applicant saying that the poultry feathers are not heated and easily torn off? Both types of animals are processed by heating the outer surface so that said outer surface, feathers or rhine, can be easily torn off. What exactly is the operating parameter of the Applicant's process that is different from the processes taught by Borup, and is that operating parameter claimed? The only support the Applicant seems to provide is the statement "a person of ordinary skill in the art would not be motivated to modify Borup to arrive at the subject matter of independent claims 1 and 13 which require guiding at least on flow of water vapor-air mixture against predetermined regions of at least one of the bodies of poultry" underlined for emphasis. What exactly are these predetermined regions, and do these regions get contacted by water vapor-air mixture at the exclusion of other regions. The Examiner does not think so. How exactly does the Applicant think that the process of Borup not contact "predetermined regions of at least one of the bodies of the pig" given the equivalency of pigs and poultry. Considering the carcasses of the reference to Borup are completely saturated with a water vapor-air mixture as a result of the circulation within the treating chamber, the reference to Borup will contact any and all of these "vague" predetermined regions of the bodies. In regards to Applicant's arguments directed to claim 17, clearly the reference to Borup is effective at removing the outer layer of a carcass given the length of the treating chamber and the velocity of the conveyor selected. Unless, the device of Borup is inoperative, it inherently meets the broad claim language of claim 17. With regard to claim 18, the Applicant is trying to

claim parameters that inherently exist. The Examiner is merely trying to demonstrate to the Applicant such. As for the arguments regarding claims 21-23, the Applicant's attention is directed to Figure 2.

Conclusion

Summary: Claims 1-27 are rejected.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Price whose telephone number is 571-272-6892. The examiner can normally be reached on M-F from 6:30a.m. to 3:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thomas Price
Primary Examiner GAU: 3643

rtp